A

BUNCHO (M) SDN BHD

v.

Q-STATIONERS SDN BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER JC
[COMMERCIAL TRIAL NO: D5(IP)-22-1470-2006]
31 JULY 2009

C ***INTELLECTUAL PROPERTY:*** *Registered design - Infringement - Allegation of - Whether plaintiff established ownership of industrial design - Whether design not new and available in the market before priority date - Whether requirements of s. 12 of the Industrial Designs Act 1996 satisfied - Whether defendant entitled to seek an order pursuant to s. 27(a)*
D *and (b) Industrial Designs Act 1996*

The plaintiff and the defendants were manufacturers and trader of stationery products. The plaintiff had designed a new and simple pencil lead case/casing which was registered through an intellectual
E property consultant. Subsequently production and sales commenced. Sometime in July 2006, the plaintiff found that the defendant was selling its pencil leads in a lead case copying the same design as that of the plaintiff. The plaintiff thus claimed that the defendants had infringed its registered industrial design. The defendant's
F defence and counterclaim at the date of trial in essence was that (i) the design was not new as stated in the Industrial Designs Act 1996 (IDA 1996); (ii) it ought to be removed under s. 24 IDA 1996; (iii) it ought to be revoked pursuant to s. 27(1)(a) and (b) of IDA 1996 (iv) that the said design was applied for in contravention of s. 12
G of the Act; (v) and the registrar of Industrial Designs was already notified of this counterclaim by the defendant filing Form ID7, pursuant to reg. 28(2) of the Industrial Designs Regulation 1999.

Held (dismissing plaintiff's claim; allowing defendant's counterclaim in part):

H

(1) It is trite that law in respect of industrial design is encapsulated in IDA 1996. Though an industrial design may be registered the court has the absolute powers to rectify the register under s. 24 of IDA 1996 or revoke the same if it is established that
I the design was not new at the date of the application and/or the design was registered in contravention of s. 12 IDA 1996, pursuant to s. 27. (para 7)

(2) For the plaintiff to succeed it must first establish that they were owners of the industrial design. In this case, PW1 who was the employee said that he was the author of the design and he produced a rough sketch (exh. P12). The sketch in a rough paper with an endorsement of a date stood only as a self serving document and lacked the expression and skill to reflect as a design in any technical sense. The definition of industrial design is more technical and imposes some level of skill in the drawings of the design. Unintelligible drawings such as exh. P12 would not qualify as a design within the definition of 'Industrial Design' to qualify for registration. The failure of the plaintiff to call all persons who was instrumental for the design to be registered was fatal to the case. In consequence, the plaintiffs had not established that they were the owners of the registered design. (para 7)

(3) The legal burden was on the plaintiff to show that at the time of registration they had satisfied the requirements of s. 12 of IDA 1996. This they could have shown by calling witnesses such as the consultant and the factory which was instrumental in producing for the plaintiff the mould to the lead case, to say that the product was never manufactured at least before the priority date. The failure to do so would not only invoke the law in respect of legal burden but would also attract the jurisprudence in relation to adverse presumption. In consequence, there was no reason to disbelieve the defendants' witnesses who attempted to establish that the design was not new and was available in the market before the priority date. (para 7)

(4) The plaintiff had not established in law that they were the owner of the Industrial Design and/or the said design was new as set out in s. 12 of IDA 1996. In consequence, the defendants were entitled to seek an order pursuant to s. 27(a) and (b) of IDA 1996. (para 7)

Case(s) referred to:

Abraham Ho Ah Loke v. William Manson-Hing [1948] 1 LNS 2 HC ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Arensi-Marley (M) Sdn Bhd v. Middy Industries Sdn Bhd [2004] 8 CLJ 20 HC ***(refd)***

Armagas Ltd v. Mundogas SA [1985] Llyods's Law Report 1 ***(refd)***

Bayer Aktiengesellschaft & Anor v. F E Venture Sdn Bhd and Third Party [1996] 1 LNS 207 HC ***(refd)***

A *Besalon International Limited & Ors v. South Strong Industries Sdn Bhd [1997] 1 CLJ Supp 335 HC* ***(refd)***
Cartwright v. Coventry Radiator Company [1925] RPC 351 ***(refd)***
Charles Henry Nevill and Others v. Jogn Bennet and Sons [1898] RPC 412 ***(refd)***
Dover v. Nurnberger Celluloid Waren Fabrik Gebruder Wolff [1910] 2 Ch 25 ***(refd)***
B *Eastern & Oriental Hotel [1951] Sdn Bhd v. Ellarlous George Fernandez & Anor & Another Case [1988] 2 CLJ 734; [1988] 1 CLJ (Rep) 50 SC* ***(refd)***
Golden Cresent Trading Sdn Bhd v. Alpine Auto Access Sdn Bhd; Pendaftar Rekabentuk Perindustrian (Interested Party) [2008] 9 CLJ 317 HC ***(refd)***
C *Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors [2000] 4 CLJ 324 CA* ***(refd)***
Heinrichs v. Bastendorff [1893] RPC 160 ***(refd)***
Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2) [2009] 8 CLJ 130 HC ***(refd)***
D *Mohamed Alias v. PP [1981] 1 LNS 200 HC* ***(refd)***
Morello Sdn Bhd v. Jaques (International) Sdn Bhd [1995] 2 CLJ 23 FC ***(refd)***
Re Clarke's Registered Design: Clarke v. Julius Sax & Co Ltd [1896] 13 RPC 351 ***(refd)***
Teh Teik Boay v. Chuah Siak Loo [1961] 1 LNS 136 HC ***(refd)***

E **Legislation referred to:**
Evidence Act 1950, s. 101
Industrial Designs Act 1996, ss. 3(1), 10(2), (3), (4), 11(1), (2), 12(1), (2)(a), 24, 25, 27(1)(a), (b), (2), 32(1), (2)(a), (c), 33(1), (2)
F Industrial Designs Regulation 1999, reg. 28(2)

Other source(s) referred to:
Sarkar on Evidence, 14th edn, p 2006

For the plaintiff - HK Ong; M/s PC Kok & Co
For the defendant - CY Loi; M/s Shearn Delamore & Co

G *Reported by Suhainah Wahiduddin*

JUDGMENT

H

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the plaintiff's claim that the defendants have infringed its registered industrial design No. MY-03-00072 and the defendant's counterclaim *inter alia* for revocation of the design. At the close of submission, the defendant informed court that they are not pursuing their counterclaim for defamation and malicious/injurious falsehood.

I

Brief Facts

[2] The plaintiff and defendants are manufactures and trader of stationery products. The plaintiff had instructed its manager (PW1) to design a new and simple pencil lead case/casing. PW1 is said to have designed on 15 December 2002. A sketch done by PW1 which was said to be the design was only produced during the trial and marked as exh. P12. The said design was registered through an intellectual property consultant on 7 February 2003. And subsequently production and sales has commenced. Sometime in July 2006, the plaintiff found that the defendant was selling its pencil leads in a lead case copying the same design as that of the plaintiff.

[3] The defendant's defence and counterclaim at the date of trial in essence was that (i) the design is not new as stated in the Industrial Designs Act 1996 (IDA 1996); (ii) it ought to be removed under s. 24 IDA 1996; (iii) it ought to be revoked pursuant to s. 27(1)(a) and (b) of IDA 1996; (iv) that the said design was applied for in contravention of s. 12 of the Act (it not being new as at the priority date of filing of 7 February 2003); (v) and the registrar of Industrial Designs was already notified of this counterclaim by the defendant filing form ID7, pursuant to reg. 28(2) of the Industrial Designs Regulation 1999.

Preliminaries

[4] Two witnesses gave evidence for the plaintiff and three for the defendants. PW2 was the main witness for the plaintiff; he said he designed it but only produced during trial a rough sketch in an unintelligible manner of the said design in a rough paper with a hand written date imprinted on the top right hand corner of the paper with the date being 15 December 2002. The defendant in this case attempted to show by exh. D13 that the said design of the plaintiff was already in the market for sales by the plaintiff as early as 1 August 2002. The plaintiffs did not call the consultant or the person who prepared the mould for the design to give evidence, notwithstanding the fact that the defendants in its pleading has put a material challenge to the existence of the design before the priority date.

[5] The plaintiff and defendant relied *inter alia* on the following cases namely: (a) *Abraham Ho Ah Loke v. William Manson-Hing* [1948] 1 LNS 2; (b) *Eastern & Oriental Hotel [1951] Sdn Bhd v. Ellarlous George Fernandez & Anor & Another Case* [1988] 2 CLJ 734;

A [1988] 1 CLJ (Rep) 50 SC; (c) *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; (d) *Charles Henry Nevill and Others v. Jogn Bennet and Sons* [1898] RPC 412; (e) *Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2)* [2009] 8 CLJ 130; (f) *Morello Sdn Bhd v. Jaques (International) Sdn*
B *Bhd* [1995] 2 CLJ 23; (g) *Arensi-Marley (M) Sdn Bhd v. Middy Industries Sdn Bhd* [2004] 8 CLJ 20; (h) *Golden Cresent Trading Sdn Bhd v. Alpine Auto Access Sdn Bhd; Pendaftar Rekabentuk Perindustrian (Interested Party)* [2008] 9 CLJ 317; (i) *Cartwright v. Coventry Radiator Company* [1925] RPC 351, 357; (j) *Heinrichs v. Bastendorff*
C [1893] RPC 160; (k) *Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors* [2000] 4 CLJ 324; (l) *Armagas Ltd v. Mundogas SA* [1985] Llyods's Law Report 1; (m) *Bayer Aktiengesellschaft & Anor v. F E Venture Sdn Bhd and Third Party* [1996] 1 LNS 207; (n) *Teh Teik Boay v. Chuah Siak Loo* [1961] 1 LNS 136; (o) *Besolan International*
D *Limited & Ors v. South Strong Industries Sdn Bhd* [1997] 1 CLJ Supp 335; (p) *Mohamed Alias v. PP* [1981] 1 LNS 200.

Industrial Design And Jurisprudence Relevant To The Case (See Narayan 2009)

E

[6] The jurisprudence relating to Industrial Design has been set out by the learned counsel for the defendant. It can be summarised as follows:

(a) "Industrial design" means where relevant for present purposes,
F features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye (see s. 3(1) of Industrial Designs Act 1996 ("IDA 1996"));

G

(b) "Owner" means the person who is registered as the owner of the registered industrial design or, if there are two or more such persons, each of those persons (see s. 3(1) of IDA 1996);

H (c) "Original owner" means the author of the design (see s. 3(1) of IDA 1996);

Note: the distinction between the author and the owner of the design.

I (d) "Registered Industrial Design" means an industrial design registered under the Act (see s. 3(1) of IDA 1996);

(e) "Statement of Novelty" means a statement relating to the representation of an article to which the industrial design is applied that indicates those features of the representation in respect of which novelty (or is it newness?) is claimed (see s. 3(1) of IDA 1996);

(f) Ownership over an industrial design can arise in the following ways:

(i) If an industrial design is created in pursuance of a commission for money or money's worth, the person commissioning the industrial design shall, subject to any contrary agreement between the parties, be treated as the original owner of the industrial design (see s. 10(2) of IDA 1996);

(ii) Where an employee in the course of his employment creates an industrial design, his employer shall, subject to any contrary agreement between the parties, be treated as the original owner of the industrial design (see s. 10(3) of IDA 1996);

(g) The original owner (ie, the author) or an assignee of any interest in an industrial design may assign in writing to another person the whole or any part of his interest in the industrial design. The assignee can therefore be regarded as an original owner provided there is a legally recognized assignment. The assignee owner cannot be the author unless he is also the originator of the design (see s. 10(4) of IDA 1996);

(h) The original owner of an industrial design is entitled to make an application for the registration of the industrial design. Further, where two or more persons own interests in an industrial design they are entitled jointly to make an application for the registration of the industrial design. By virtue of this, an assignee of an industrial design can be regarded as person owning an interest in the same and as such, entitled to file for design registration (see s. 11(1) and (2) of IDA 1996);

(i) An industrial design cannot be registered unless it is new and it shall not be considered as new if, before the priority date of its application, it or an industrial design differing from it only in immaterial details or in features commonly used in the relevant trade:

A (i) Has already been disclosed to the public anywhere in Malaysia; and

Public disclosure would cover all actions of sales, use, publication, publicity, exhibiting or such similar activities (see B s. 12(1) and (2)(a) of IDA 1996);

(j) A registered industrial design is valid for an initial term of five years computed as of its filing date and may be extended up to a maximum of fifteen years at five yearly intervals (see s. 25 of IDA 1996);
C

(k) At any time after the registration of an industrial design, any person may apply to the court:

(i) For the revocation of the registration of the industrial D design, on the ground that the industrial design has been disclosed to the public prior to the priority date of the application for registration of the industrial design (see s. 27(1)(a) of IDA 1996); or

E (ii) For the cancellation of the registered industrial design on the ground that the registration of the industrial design has been procured by unlawful means (see s. 27(1)(b) of IDA 1996);

F (l) The Registrar of Industrial Design must be notified of any revocation proceeding by filing with him Form ID7 (see s. 27(2) of IDA 1996);

(m) The owner of a registered design shall have the exclusive right to make or import for sale or hire, or for use for the purposes G of any trade or business, or to sell, hire or to offer or expose for sale or hire, any article to which the registered industrial design has been applied (see s. 32(1) of IDA 1996);

(n) A person infringes the rights conferred by the registration of an H industrial design if he, without the license or consent of the owner of the industrial design, does any of the following things while the registration is still in force (see s. 32(2) of IDA 1996):

I (i) Applies the industrial design or any fraudulent or obvious imitation of it to any article in respect of which the industrial design is registered (see s. 32(2)(a) of IDA 1996); and

(ii) Sells, or offers or keeps for sale, or hire, or offers or keeps for hire, any of the [infringing] articles (see s. 32(2)(c) of IDA 1996);

(o) The owner of a registered industrial design shall have the right to institute legal proceedings against any person who has infringed or is infringing any of the rights conferred by the registration of the industrial design. A similar right is available against any person who has performed acts that make it likely that an infringement will occur (see s. 33(1) and (2) of IDA 1996);

(p) The Industrial Designs Act 1996 says that the industrial design must be new. A design only needs to be new in Malaysia as its priority date to qualify for registration (see s. 12 of IDA 1996);

(q) An industrial design is not new if before its priority date, it or an industrial design differing from it only in immaterial respects was disclosed to the Malaysian public (see s. 12(2) of IDA 1996).

(r) In the High Court case of *Golden Cresent Trading Sdn Bhd v. Alpine Auto Access Sdn Bhd; Pendaftar Rekabentuk Perindustrian (Interested Party)* [2008] 9 CLJ 317, Ramly J (as he then was) stated this at p. 325, para. 25:

> Under section 12 of the IDA, an industrial design shall not be registered unless it is new. An industrial design shall not be considered to be new if before the priority date of [its] application for registration, it or an industrial design differing from it only in immaterial details or in features commonly used in the relevant trade was disclosed to the public anywhere in Malaysia.

(s) The learned judge in the same case further elaborated on what amounts to publication. At p. 325, para. 26, he made reference to the unreported case of *Teh Teik Boay v. Chuah Siak Loo* [1961] 1 LNS 136 where Hepworth J said the following:

> Broadly speaking, there is publication if the design has been disclosed to the public as opposed to being kept secret. The question which has to be decided is, therefore, has the public been put in possession of the design? Has it knowledge of the design? It is not necessary that the design should have been actually used. There will just as much be a publication if it is shown that it was known to the public, without ever having

A been actually out to use. Thus, publication may be of two types, (a) publication in prior documents; (b) publication by prior user.

(t) The definition of 'prior use' by Russell-Clarke was adopted by *Besalon International Limited & Ors v. South Strong Industries Sdn Bhd* [1997] 1 CLJ Supp 335 where the learned judge said the following:

B

Prior use according to Russell-Clarke (page 50):

C

> Occurs where the design has been actually applied to articles before the date of registration of the design, and those articles have been used in such a way that the design becomes disclosed to the public.

[7] I have heard the evidence, read the documents, exhibits and D submission of the parties in detail. Both parties have adequately dealt with the evidence and the law in the submission. I do not think it will serve any useful purpose to repeat the same save as to deal with the relevant issues. I take the view the plaintiffs' claim must be dismissed and the defendant's counterclaim to some extent E must be allowed. My reasons *inter alia* are as follows:

(a) It is trite that law in respect of industrial design is encapsulated in IDA 1996. Though an industrial design may be registered the court has the absolute powers to rectify the register under F s. 24 of IDA 1996 or revoke the same if it is established that the design was not new at the date of the application and/or the design was registered in contravention of s. 12 IDA 1996, pursuant to s. 27.

G (b) For the plaintiff to succeed it must first establish that they are the owners of the industrial design. In this case PW1 who was the employee said that he was the author of the design. He produced a rough sketch exh. P12 with a date endorsed as 15 December 2002. The sketch in a rough paper with an endorsement of a date in my view stands only as a self serving H document and lacks the expression and skill to reflect as a design in any technical sense. Though what is the meaning of design is not defined in the Act, much thought has been expressed in case laws to show what could qualify to be known as a design to satisfy the requirement as to "industrial design" I which has been adequately defined in the Act (see (i) *Re Clarke's Registered Design: Clarke v. Julius Sax & Co Ltd* [1896] 13 RPC 351; (ii) *Dover v. Nurnberger Celluloid Waren*

Fabrik Gebruder Wolff [1910] 2 Ch 25, Buckley LJ And the Act does not subscribe to the dictionary meaning of design, which may relate to a sketch. The definition of industrial design is more technical and imposes some level of skill in the drawings of the design. Unintelligible drawings such as exh. P12 will not qualify as a design within the definition of "Industrial Design" to qualify for registration. The failure of the plaintiff to call all persons who was instrumental for the design to be registered is fatal to the case. In consequence, it is my finding that the plaintiffs had not established that they are the owners of the registered design.

(c) One of the hot contentions in the instant case, both in the evidence as well as in the pleadings, is that it was the defendant's case that the said design was not new and was available in the market, before the priority date. The legal burden is on the plaintiff to show that at the time of registration they have satisfied the requirement of s. 12 of IDA 1996. This they could have at least shown by calling witnesses such as the consultant and the factory which was instrumental in producing for the plaintiff the mould to the lead case, to say that the product was never manufactured at least before the priority date. The failure to do so will not only invoke the law in respect of legal burden but will also attract the jurisprudence in relation to adverse presumption. In consequence, I have no reason to disbelieve the defendant's witnesses who attempted to establish that the design was not new and was available in the market before the priority date.

(d) The plaintiff's argument on these issues that the defendant failed to cross-examine PW1 on the design is fatal and has no merits. And relies on the Court of Appeal decision in *Aik Ming (M) Sdn Bhd & Ors v. Chan Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 where it was stated:

> It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case ...
>
> > The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is a rule of essential justice ... if he

asks no question with regard to this, then he must be taken to accept the plaintiffs' account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he finished the evidence of his witness and when he has no further chance to meet the new case made which was never put and secondly, because subsequent testimony has no chance to be tested and corroborated.

The words echoed by the Court of Appeal have its roots in *Sarkar on Evidence* 14th edn, p. 2006, which reads as follows:

> Effect of omitting or not cross-examining a witness on essential points. The skilful cross-examiner must hear the statements in examination-in-chief with attention, and when his turn comes, he should interrogate the witness on all material points that go against him. If he omits or ignores them, they may be taken as an acceptance of the truth of that part of witness's evidence. Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share. Thus, if a witness speaks about a conversation, the cross-examining lawyer must indicate by his examination how much of the witness's version of it he accepts and how much he disputes, and to suggest his own version. If he asks no questions, he will be taken to accept the witness's account (*Flanagan v. Fahy* [1918] 2 IR 361, 388-89 CA; *Browne v. Dunn*, infra; see *Odgers' Pleading*, 13th Ed p 261; Powell 9th Ed p 531: Wig Vol 2 para 1371; Phipson, 11th Ed p 649; see also *Chunilal v. H F Ins Co., A* [1958] Pu 440; *Babulal v. Caltex (India) Ld, A* [1967] C 205]. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that is merely a technical rule of evidence. It is a rule of essential justice (*Carapiet v. Derderiem, A* [1961] C 359. In this case PB Mukharji J, Relied On And Quoted The Observations Of Lords Herschell And Halsbury in *Browne v. Dunn*, 6 R 67, 76-7, reproduced under s 146 post under heading: "Testing veracity and impeaching credit"; *S v. Bhola*, A 1969 Raj 220). Therefore an omission or neglect to challenge the evidence in chief on a material or essential point by cross-examination, would lead to the inference that the evidence is accepted, subject of course to its being assailed as inherently incredible or palpably untrue (See *Sachindra v. Nilima, A* [1970] C 38, 63) ... Where however, several witnesses are called to prove the same point, it is not always necessary that they should all be cross-examined.

> Failure to cross-examine, however, will not always amount to an acceptance of the witness's testimony, eg if the witness has had notice to the contrary beforehand, or the story is itself of an incredible or romancing character [*Browne v. Dunn,* sup; (quoted in *Sukhraji v. STC, A* [1966] C 620)] or the abstention arises from mere motives of delicacy, as where young children are called as witnesses for their parents in divorce cases, or when counsel indicates that he is merely abstaining for convenience, eg to save time (Phip 11th Ed p 649).

What was stated in Aik Ming must not be quoted as a naked and bare statement of the law. Apex proposition must always be seen to be clothed with the law etc. It is trite that the legal burden is on the plaintiff or defendants as the case may be to establish each and every element necessary to succeed in their pleadings. (see s. 101 of Evidence Act 1950). The rules of pleading as to joinder of issue are also relevant when dealing with the proposition stated in Aik Ming. Aik Ming does not propose to write off the law relating to burden of proof or rules of pleadings. There can be no surprises when the law and rules of pleadings places the burden on the parties to establish the case. The principles stated in Aik Ming is the replica of what was adumbrated by *Sarkar on Evidence* 14th edition related to the House of Lords decision in *Brown v. Dunn*. Sarkar makes it clear that the rule applies in relation to cross-examining a witness on essential points said in examination-in-chief. It does not cover issues which are already in dispute before the court. The reason being no parties will be taken by surprise. The issues before the court must be established according to law and one cannot get away citing the rule in *Browne v. Dunn*. *Browne v. Dunn* does not make the law in respect of legal burden or rules of pleadings relating to joinder of issues otiose. He who alleges must proof and cannot be equated to being sufficient proof by making the witness available and not leading sufficient evidence in examination in chief. And relying on the purported omission of the defendant to cross-examine on matters which the defendant need not do in law. In *Aik Ming*, the Court of Appeal was careful in its proposition and said 'may' and referred to the testimony in examination in-chief, so were the learned authors of *Sarkar on Evidence*.

(e) It is my finding that the plaintiff have not established in law that they are the owner of the Industrial Design and/or the said design is new as set out in s. 12 of IDA 1996. In consequence, defendants are entitled to seek an order pursuant to s. 27(a) and (b) of IDA 1996.

[8] For reasons stated above, I dismiss the plaintiff's claim and allow the defendant's counterclaim in part, namely the following prayers in para. 13(i)(ii)(iii) partly of the counterclaim to read as follows:

(i) MY 03 000720 being an industrial design for a pencil lead case granted in the name of Buncho (M) Sdn is invalid;

(ii) The register of Industrial Design be rectified by expunging from it the fact of the grant of MY 03 000720 in the name of Buncho (M) Sdn Bhd together with all the particulars relating to the application or grant of MY 03 000720;

(iii) The registrar of Industrial Designs upon being served with the order of court do take expeditious administrative action to have the fact of the revocation and rectification of the register relating to MY 03 000720 gazetted.

[9] The plaintiff to pay the defendants a fix costs of RM50,000, with no order as to costs for the counterclaim.

[10] I hereby order so.